IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

C.R.P.(PD) Nos.517 & 518 of 2004

A.Chinnaraj ... Petitioner in CRP No.517/2004/ 2nd Defendant

R.Elumalai ... Petitioner in CRP No.518/2004 4th Defendant

vs.

Saroja Ammal ... Respondent in both the CRPs/ Plaintiff

Civil Revision Petitions under Article 227 of the Constitution of India against the order dated 10.11.2003 made in I.A.No.275 and 276 of 2002 in O.S.No.442 of 1997 on the file of Additional District Munsif, Tindivanam.

For Petitioners ... Mr.N.Maninarayanan

For Respondents ... No appearance.

ORDER

Heard the learned counsels appearing for the parties.

2. The defendants 2 and 4 in O.S.No.442/1997 on the file of Additional District Munsif, Tindivanam have filed these Civil Revisions challenging the order of the trial court dated 10.11.2003. The two defendants had filed interim applications for considering the question of the pecuniary jurisdiction as well as the sufficiency of court fee paid as preliminary issue. The trial court, on consideration of materials, has come to the conclusion that it is not necessary to take up such matter as preliminary issue. The trial court has also observed that the court fee paid is sufficient and it has got jurisdiction.

3.The learned counsel appearing for the petitioners contended that in view of the provisions contained in Order XIV Rule 2 CPC, the question relating to jurisdiction should have been taken

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as a preliminary issue. He has further submitted that at any rate the question before the court at that stage was whether the matter should be taken as a preliminary issue or not and therefore the trial court should not have given findings regarding the sufficiency of court fee and regarding the jurisdiction of the court and should have been taken either preliminary issue or as an issue along with other questions.

4.Order XIV Rule 2 CPC is extracted hereunder.

> "2.Court to pronounce judgment on all issues.--(1)Notwithstanding that a case may be disposed of on preliminary issue, the Court shall subject to the provisions of sub-rule (2, pronounce judgment on all issues.
>
> (2)Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may by that issue first if that issue relates to--
>
> (a)the jurisdiction of the Court, or
>
> (b)a bar to the suit created by any law for the time being in force,
>
> and for that purpose may, if it thinks fit postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

5. On a perusal of the aforesaid provision, it is clear that ordinarily the court should try all the issues together and an issue may be taken up as a preliminary issue only if it relates to the question of jurisdiction and it is based purely on a question of law. In other words, where for deciding a particular issue relating to jurisdiction evidence would be necessary, such issue should not be considered as a preliminary issue.

6.In the present case, the question raised by the defendants is dependant upon evidence to be taken and is not a pure question of law relating to jurisdiction of the Court and therefore the trial court was right in observing that the issue need not be taken as a preliminary issue. However, once such a conclusion was reached, the trial court should not have made any observation which may prima facie indicate as if the trial court has also decided the questions raised on merit.

7. In such view of the matter, the order of the trial court to the extent that it has refused to take up the question as preliminary issue is upheld. However, it is observed that the question relating to pecuniary jurisdiction as well as the question relating to sufficiency of court fee should be considered by the

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trial court along with other questions. It is made clear that the present order should not be considered as expressing any opinion on the merits of the contentions raised and the matter has to be decided in accordance with law by the trial court.

8. The civil revision petitions are rejected, subject to the aforesaid observations. No costs. Connected CMP No.5236 and 5237 of 2004 are also rejected.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Gb/dpk.

To:

The Additional District Munsif,
Tindivanam.

VRK (CO)
km/8.10.

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